FREEDOM OF INFORMATION ACT (FOIA)

United States Army

Overview

After completing this course, you should be knowledgeable about:

- What is the FOIA
- Who can file a FOIA request
- How long it takes a FOIA request to be processed
- FOIA request limitations and exemptions

What is the Freedom of Information Act?

The Freedom of Information Act is a law that establishes the public's right to request existing records from Federal Government agencies.

It is often described as the law that keeps the public in the know about their government.

For more information on the Freedom of Information Act click here.

In order to receive information on the (FOIA) 5 U.S.C. 552 from the Federal Government, a valid FOIA request must be submitted.

Which government agencies are subject to the FOIA?

Agencies subject to the FOIA:

All agencies within the executive branch of the federal government, including independent regulatory agencies and the Executive Office of the President.

Agencies that are not subject to the FOIA:

- Courts, congress, state governments, private citizens or corporations
- Offices within the Executive Office of the Presidents who functions are limited entirely to advising and assisting the President.

Who can make a FOIA request?

Any person regardless of citizenship, businesses, organizations, associations, state, local or foreign governments can make a FOIA request.

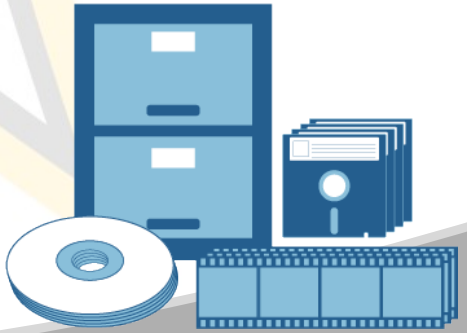
Exceptions:

- A federal agency (AR 22-55 1-401)
- A fugitive from the law
- Foreign governments or international governmental organizations requesting information from intelligence agencies
- Heads of congressional committees in their capacity

Records that are subject to the FOIA

Agency Records – Records either created or obtained by agency; and under agency control at the time of the FOIA request

Record Types: Paper documents, tapes, photos and electronic records in possession and control of the army.



Records that are subject to the FOIA

Some rules that apply:

- Does not include tangible evidentiary objects
  - e.g. structures, furniture, vehicles, equipment, etc.
- Must provide records in any form requested if “readily reproducible”
  - e.g. books, maps, photographs, etc.
- Must make a reasonable effort to search for records including electronic form
- Not personal records

Records that are subject to the FOIA

Factors to be considered when determining if records should be provided (i.e. R.E.A.D) are:

- **R**ecord creator's intent to control the records
- **E**xtent to which personnel have read/relied on the records
- **A**bility of the agency to use the records
- **D**egree of integration of the records into agency files

Records that are subject to the FOIA

Access to certain records without a FOIA Request- Electronic Reading Room

FOIA statute requires agencies to make certain types of records, created by the agency, available electronically.

- Final agency opinions and orders made in the adjudication of cases.
- Specific agency policy statements
- Certain administrative staff manuals that affect a member of the public
- Records which have been the subject of a FOIA request, and the agency believes others are likely to make requests for the same records (or have already requested) should be made readily available in the reading room.

FOIA Limitations

Under the FOIA, agencies are not required to:

- Conduct research for requesters
- Analyze data
- Create records in response to a request
- Add explanatory materials to any records disclosed
- Render opinions or answer questions
- Provide subjective evaluations to satisfy questions from the public
- Re-create records properly disposed of
- Seek the delivery of records held by private entities

Records must exist and be in possession of the Army at the time of search to be

considered subject to FOIA.

How to submit a valid FOIA Request

In order for a FOIA request to be processed, it must include the following:

- ✔ Be submitted in writing
- ✔ Comply with specific agency requirements
- ✔ Reasonably describe the specific records being sought (e.g. names, titles, dates, places, events, etc.)
- ✔ Indicate a willingness to pay fees associated with the processing of the FOIA request

There is no initial fee to make a FOIA request and in many cases no fees are charged.

However, agencies are authorized by law to recover the direct costs of providing

information to a FOIA requestor.

Where to send a FOIA Request

There is no one place to send all FOIA requests in the Army. Each individual command controls its own records and can respond directly to their requests. Therefore;

- Requests may be sent via mail, email, fax, or web form where available
- Submitted to the Army activity (FOIA office) that has custody of the responsive records.

Where to send a FOIA Request

If you need assistance in determining the correct Army component to address the request, contact the Army FOIA office at:

- RMDA, U.S. Army Freedom of Information Office, Casey Building, Suite 150, ATTN: AAHS-RDF, 7701 Telegraph Road, Alexandria, VA 22315-3905 or
- Via fax: Fax: (703) 428-6522 or
- Via email: usarmy.belvoir.hqda-oaa-aha.mbx.rmda-foia@mail.mil

How long do FOIA requests take to be processed?

Response times vary depending on the complexity of a request and the backlog of requests pending at an Army activity. FOIA requests may be handled in a routine or expedited manner.

Routine Processing

The FOIA office will attempt to provide a final determination on disclosure and respond to requests within 20 working days of receipt (excluding Saturday, Sunday, and Federal holidays).

How long do FOIA requests take to be processed?

Expedited Processing

Action on a request may be expedited when a compelling need for the information is demonstrated, such as:

- An imminent threat to life or physical safety
- Loss of substantial due process rights
- An individual primarily engaged in disseminating information in order to inform the public concerning some actual or alleged federal government activity

A decision to grant or deny a request for expedited processing must be provided within 10 calendar days after receipt of the request.

How long do FOIA requests take to be processed?

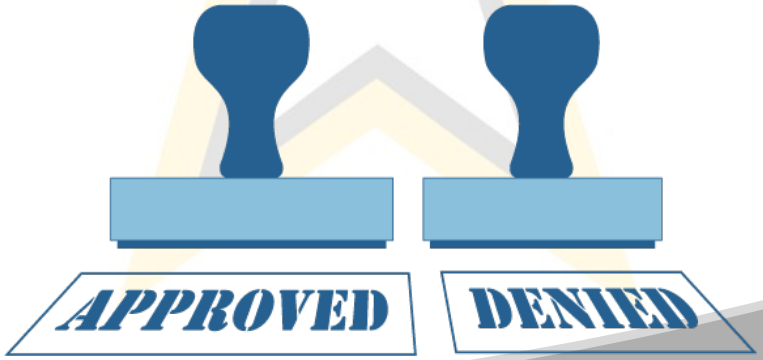
When a FOIA office needs more time to process your request, they will notify you in writing and provide you with an opportunity to modify or limit the scope of your request.

Alternatively, you may agree to a different time frame, or under certain conditions, you may be entitled to have your request processed on an expedited basis.

Possible outcomes of a FOIA request

Possible outcomes of a FOIA request are:

- All documents provided
- No-record response
- Notice is given of partial or total denial of information



FOIA exemptions

Not all records can be released under the FOIA. Congress established certain categories of information that are not required to be released in response to a FOIA request because release would be harmful to governmental or private interests. These categories are called "exemptions" from disclosures.

Here are the recognized exemptions under FOIA:

- **Exemption 1**: Information that is classified to protect national security. The material must be properly classified under an Executive Order
- **Exemption 2**: Information related solely to the internal personnel rules and practices of an agency
- **Exemption 3**: Information that is prohibited from disclosure by another federal law

FOIA exemptions

- **Exemption 4**: Information that concerns business trade secrets or other confidential commercial or financial information
- **Exemption 5**: Information that concerns communications within or between agencies which are protected by legal privileges
- **Exemption 6**: Information that, if disclosed, would invade another individual's personal privacy
- **Exemption 7**: Information compiled for law enforcement purposes if one of the following harms would occur
- **Exemption 8**: Information that concerns the regulations or supervision of financial institutions.
- **Exemption 9**: Geological and geophysical information and data, including maps and concerning wells.

You can visit www.justice.gov.oip/doj-guide-freedom-information-act for more information on FOIA exemptions

Filing an appeal

You may file an administrative appeal if an agency's initial response to your request is not satisfied. You may contact the FOIA professional handling the request, or the FOIA contact provided by the agency.

Once you have filed, there will be an independent review and the appellate authority will send you a letter advising you of its decision.

Once the administrative appeal process is complete, you also have the option to seek mediation services from the Office of Government Information Services at the National Archives and Records Administration (NARA).

Resources for filing a FOIA request

The following sites provide useful information on filing a FOIA request:

- **www.data.gov** is a place to look for records that are already publically available
- **www.federalregister.gov** is a fully-searchable daily gazette of the federal government. The Federal Register contains information about new and pending rulemakings and other activities of the executive branch
- **www.rmda.army.mil** provides guidance on FOIA training, programs, information sites and a direct link to submit a FOIA request.

Additional FOIA resources

Other FOIA sites:

- Department of Justice FOIA
- Department of Defense FOIA
- Department of the Navy FOIA
- Department of the Air Force FOIA
- Department of Energy FOIA
- U.S. Coast Guard FOIA
- Additional FOIA Links